IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.12.2006

CORAM

THE HONOURABLE Mr. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Civil Revision Petition (NPD) No.1387 of 2004
and
C.M.P.No.11120 of 2004 and VCMP No.197 of 2006

A.Babjan .... Petitioner

Vs.

The Director
Central Research Institute for Siddha
Chennai, Camp office at Mettur Dam
Mettur Taluk, Salem District. .... Respondent

Civil Revision Petition is filed under Section 115 of CPC against the fair and decretal order dated 20.10.2003 and made in I.A.NO.846 of 2003 in O.S.No. 197 of 1998 on the file of District Munsif Court, Mettur.

For Petitioner : : Mr. N.Manoharan

For respondent: : Mr.A.R.Nagarajan

O R D E R

The order passed in I.A.No.846 of 2003 in O.S.No.197 of 1998 on the file of District Munsif's Court, Mettur is under challenge before this Court.

2. The said application was filed under Order 14 Rule 2(2) of C.P.C. The third defendant in O.S.No.197 of 1998 was the petitiioner in I.A.No.846 of 2003. The petitioner had filed the said application with a prayer to take up the additional issue No.1 as a preliminary issue before deciding the other issues in the suit. The additional issue No.1, is "whether the Civil Court has jurisdiction to entertain the suit as per the provisions 15 of the Tamil Nadu Public Premises(Unauthorised Occupants)Evitction Act 1975 and Section 14 of the Tamil Nadu Land Encroachment Act, 1905?"

3. The respondent/plaintiff has filed his counter in that application contended that the respondent is in possession and enjoyment of 0.85 acres in Block No.13 T.S.No.9/238 for the past 30

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

years and that he has been issued "B"memo by the Government for the enjoyment of those lands by the plaintiff.

4. The learned District Munsif has framed the point for consideration as follows:

> "Whether the preliminary issue can be tried by this Court as prayed for by the petitioner?"

The only point to be decided in this application which was under Order 14 Rule 2(2) of C.P.C. is whether the suit is barred as per the provisions 15 of the Tamil Nadu Public Premises(Unauthorised Occupants)Evitction Act 1975 and Section 14 of the Tamil Nadu Land Encroachment Act, 1905? and whether the Civil Court has jurisdiction to entertain the suit."

5. The Trial Judge ought to have given a finding to the point whether the additional issue No.1 already framed in the suit is to be taken up as a preliminary issue or not?. But without giving a finding to the point raised by the trial Court in I.A.No.846 of 2003 in O.S.No.197 of 1998, the learned trial Judge had elaborately discussed about the merits and demerits of the parties to the suit, ultimately has given a finding that the suit itself is not maintainable.

6. The learned counsel appearing for the petitioner relying on a decision reported in Pratima Sinha and others-vs-Shashikumar Narain Sinha and others(2004)13 Supreme Court Cases,599)and contended that the trial Court without taking up the additional issue No.1 as a preliminary issue and without giving an opportunity to both parties has straightaway come to a conclusion that the suit itself is not maintainable and dismissed the suit which is not in accordance with law. The facts of the above said case is that the suit was filed by the plaintiff for declaration that appellants 1 to 5 had no right to sell the land and house described in Schedule 1 of the compromise decree as indicated in plans 1 and 2 attached to the compromise decree and detailed in Schedule II to the plaint, either to Appellants 7 to 9 or any other stranger except to the respondents. The respondents also claimed protection in respect of the newly constructed passage by the respondents as well as the reconveyance of the suit premises by respondents 7 to 9. A written statement was filed by the appellants before the trial Court. An objection was raised as to the maintainability of the suit filed by the respondents. Without framing any issues under Order 14 Rule 1, the trial court dismissed the suit on a preliminary ground which was challenged before the High Court and the High Court has set aside the decision of the trial Court and remanded the matter to the trial Court to decide the suit in accordance with law. The said order of the High Court has been challenged before the Apex Court wherein their Lordships have held as follows"

> "However, we do not intend to decide the matter on merits at all. We are of the view that the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> Subordinate Judge should have framed the issues arising out of the pleadings in accordance with the procedure of Order 14 Rule 1 of the Civil Procedure Code. After framing all the issues, if the trial Judge is of the view that any of the issues raised would dispose of the suit either wholly or in part then the Judge can on the basis of the provisions of Order 14 Rule 2 decide such issue. The Subordinate Judge not having followed this procedure, we do not think that it would be appropriate to uphold the decision of the Subordinate Judge. Ultimately, the findings of the Subordinate Judge and the decision of the High Court were set aside and the matter was remanded to the trial Court for redeciding the suit strictly in compliancne with the observation in this Judgment."

The above said dictum applies to the present facts of the case on hand in all four corners. The learned District Munsif without giving a finding whether the additional issue No.1 already framed in the suit is to be tried as a preliminary issue or not, has erroneously given a finding to the effect that the suit itself is not maintainable. The application in I.A.No.846 of 2003 was filed under Order 14 Ruoe 2(2) of C.P.C. Which runs as follows:

> "Notwithstanding that a case may be disposed of on preliminary issue, the Court shall subject to the provisions of Sub Clause(2) pronounce Judgment on all issues
> 2) Where issues both of law and of fact arise in the same suit, another Court is of opinion that the case or any part there of may be disposed of on an issue of lalw only, it may try that issue first if that issue relates to-
> a) the Jurisdiction of the Court, or
> b) a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlemenet of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue".

If the trial Court thought it fit to decide the additional issue No.1 as a preliminary issue, it would have taken up the additional Issue No.1 as a preliminary issue and after giving an opportunity to both parties to let in evidence should have given a finding on additional issue No.1. Instead the learned District Munsif has observed in his Judgment at paragraph 5 that both the parties have not let in any oral or documentary evidence. But no opportunity was given to both parties to let in evidence before deciding the first additional

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

issue. Instead of giving a finding under Order 14 Rule 2(2) C.P.C. to the effect that whether the additional issue No.1 is to be taken as a preliminary issue or not, the learned District Munsif has taken up the additional issue No.1 itself and dismissed the suit without giving any opportunity to both parties to let in any evidence. Further there is no finding in respect of other issues also as provided under Order 14 Rule 2(1) C.P.C.

7. Under such circumstances, I am of the view that the order of the trial Court in I.A.No.846 of 2003 in O.S.No.197 of 1998 is liable to be set aside and accordingly the same is set aside.

8. In fine, the revision petition is allowed setting aside the order passed in I.A.No.846 of 2003 in O.S.No.197 of 1998 on the file of District Munsif's Court, Mettur. No costs, Consequently, connected C.M.P.NO.11120 of 2004 and VCMP.No.197 of 2006 are closed. The learned trial Judge is directed to give a finding in I.A.NO.846 of 2003 in O.S.No.197 of 1998 to the effect whether the additional Issue No.1 is liable to be taken up as a preliminary issue or not and then to give sufficient opportunities to both parties to let in evidence on the issue including the other issues as contemplated under Order 14 Rule 1 C. P.C and then to decide the matter afresh. The trial court is directed to dispose of the matter within a period of two months from the date of receipt of a copy of this order.

Sg

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The District Munsif
Mettur (with records if any)

2. The Record keeper, VR Section,
High Court, Madras.

1 CC TO MR.N. MANOKARAN, ADVOCATE SR 59842

C.R.P.NPD No.1387/2004

GM(CO)

BP/5.12 04.12.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/